

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROSEANNE M. SMITH, and M.S., a)	
minor child,)	No. CV-05-357-CI
)	
Plaintiffs,)	ORDER GRANTING DEFENDANT'S
)	UNOPPOSED MOTION TO DISMISS
v.)	FOR LACK OF JURISDICTION
)	
DAVID SUMMERS,)	
)	
Defendant.)	

BEFORE THE COURT is Defendant's Motion to Dismiss for Lack of Jurisdiction, noted for hearing without oral argument on April 20, 2006.¹ Attorneys Brian Sheldon and Julian St. Marie represent Plaintiffs; attorney Steven M. Cronin represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 17.)

Defendant moves to dismiss the instant action pursuant to FED. R. Civ. P. 56, asserting he is a resident of Oregon and all acts complained of giving rise to the instant Complaint occurred in Portland, Oregon. (Ct. Rec. 1, 13.) Defendant further asserts there are no factual allegations alleged in the Complaint to establish a prima facie showing of either general or specific

¹Chambers staff has confirmed telephonically Plaintiff's counsel received electronic notification of the instant Motion, but did not intend to file a response.

1 jurisdiction over Defendant.

2 The court construes the Motion as one to dismiss pursuant to
3 FED. R. CIV. P. 12(b)(1) and(2). Plaintiff bears the burden of
4 demonstrating the existence of personal jurisdiction. *Rio Props,*
5 *Inc. v. Rio International Interlink*, 284 F.3d 1007, 1019 (9th Cir.
6 2002). A review of the Complaint does not set forth a factual
7 demonstration for asserting Washington state jurisdiction over an
8 Oregon resident based on an injury which occurred in Oregon.
9 Moreover, a failure to file a memorandum or points and authorities
10 in opposition to a motion may be considered by the court as consent
11 to an adverse order on the part of the party failing to file. LR
12 7.1(h)(5), Local Rules for the Eastern District of Washington.
13 Accordingly,

14 **IT IS ORDERED:**

15 1. Defendant's Motion to Dismiss for Lack of Jurisdiction
16 (Ct. Rec. 11) is **GRANTED**. Plaintiff's Complaint is **DISMISSED**
17 **WITHOUT PREJUDICE**.

18 2. The District Court Executive is directed to file this
19 Order and provide a copy to counsel for Plaintiff and Defendant.
20 Judgment shall be entered for Defendant and the file shall be
21 **CLOSED**.

22 DATED May 17, 2006.

23
24 S/ CYNTHIA IMBROGNO
25 UNITED STATES MAGISTRATE JUDGE
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